

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE
November 14, 2002

IN RE:

**PACIFIC GUARANTEE MORTGAGE
CORPORATION**

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DOCKET NO. 02-00944

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on October 21, 2002, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and Pacific Guarantee Mortgage Corporation ("Pacific") related to six (6) alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes.¹ The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of

¹ See Tenn. Code Ann. § 65-4-401 *et seq.*

the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.² “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”³

The CSD’s investigation in this docket commenced after it received a complaint on May 10, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Pacific on May 7, 2002. The CSD provided Pacific with notice of this complaint on May 20, 2002. At the time this call was made, Pacific was not registered in the Tennessee Do-Not-Call Program. During the investigation, the CSD received four (4) additional complaints from Tennessee consumers properly registered in the Do Not Call Program alleging that Pacific had violated Tenn. Code Ann. § 65-4-404.

The proposed Settlement Agreement was negotiated as the result of the CSD’s investigation into the complaints against Pacific. The maximum penalty faced by Pacific in this docket is twelve thousand dollars (\$12,000), arising from the five (5) complaints and the failure to register in the Do-Not-Call Program. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in

² See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

³ Tenn. Code Ann. § 65-4-405(f).

the courts of this state.

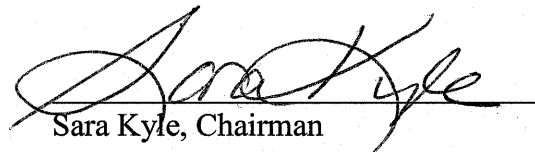
Pacific, a company headquartered in Chicago, Illinois, employs approximately six hundred (600) workers nationwide, with approximately thirty (30) workers in its two (2) Tennessee offices. Shortly after receiving notice of the complaints, Pacific contacted the CSD and began an internal investigation. Pacific did not dispute that the calls were made and expressed an interest in resolving this matter. Company officials notified the CSD that Pacific was cooperating with federal law enforcement efforts directed at the Pacific office in Reston, Virginia where the alleged violations of Tenn. Code Ann. § 65-4-404 occurred. As a part of the Settlement Agreement, Pacific agreed to pay to the Authority the amount of six thousand dollars (\$6,000) no later than thirty (30) days from the date the Settlement Agreement is approved by the Directors of the TRA.

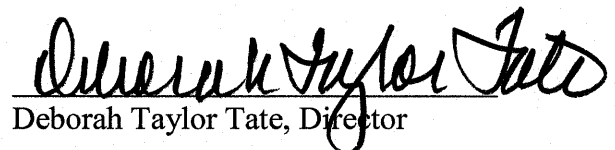
A representative of Pacific participated telephonically during the Authority Conference on October 21, 2002. Following a discussion with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

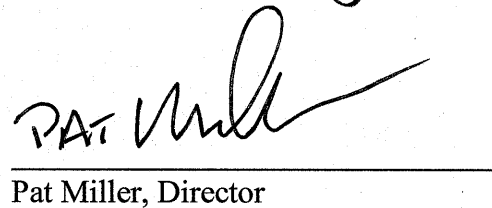
IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.
2. The amount of six thousand dollars (\$6,000) shall be paid by Pacific the TRA no later than thirty (30) days from the date of the Authority's approval of the Settlement Agreement.

3. Upon payment of the amount of six thousand dollars (\$6,000) and compliance with the terms of the Settlement Agreement attached hereto, Pacific is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Pacific comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

IN RE:

ALLEGED VIOLATIONS OF TENN.
CODE ANN. §65-4-401 *et seq.*, DO-NOT-
CALL SALES SOLICITATION LAW,
AND RULES OF TENNESSEE
REGULATORY AUTHORITY, CHAPTER
1220-4-11, BY:

PACIFIC GUARANTEE MORTGAGE
CORPORATION

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) TRA DOCKET NO. 02-00944
)
) DO-NOT-CALL T01-00300
) PROGRAM T01-00315
) FILE NUMBERS T01-00333
) T01-00334
) T01-00410
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SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Pacific Guarantee Mortgage Corporation ("Pacific" or the "Company"). This Settlement Agreement is subject to the approval of the TRA.

This Settlement Agreement pertains to five (5) separate complaints received by the CSD alleging that Pacific violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations. TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone



solicitations. TENN. CODE ANN. § 65-4-404(d), requires that persons and entities desiring to make telephone solicitations to residential subscribers pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations.

The CSD's investigation in this docket commenced after it received a complaint (T02-00300) on May 10, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Pacific on May 7, 2002. The CSD provided Pacific with notice of this complaint on May 20, 2002. At the time this call was made, Pacific was not registered in the Tennessee Do-Not Call Program.

The CSD received a second complaint (T02-00318) on May 22, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Pacific on May 17, 2002. The CSD provided Pacific with notice of this complaint on May 23, 2002.

The CSD received its third complaint (T02-00333) on May 29, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Pacific on May 16, 2002. The CSD provided Pacific with notice of this complaint on May 30, 2002.

The CSD received its fourth complaint (T02-00334) on May 29, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Pacific on May 17, 2002. The CSD provided Pacific with notice of this complaint on May 30, 2002.

The CSD received its fifth complaint (T02-00366) on June 11, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone

solicitation from Pacific on May 9, 2002. The CSD provided Pacific with notice of this complaint on June 20, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Pacific in this proceeding is twelve thousand dollars (\$12,000), arising from the five (5) complaints and the failure to register in the Do-Not-Call Program. CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b) during the negotiations which resulted in this agreement, including Pacific's size, financial status, and good faith and the gravity of the violations.

Pacific is a company employing approximately six hundred (600) workers nationwide and has approximately thirty (30) workers in two offices in Tennessee. Its executive office is located in Chicago, Illinois. During the investigation, Pacific demonstrated its good faith by registering as a telephone solicitor with the TRA on May 24, 2002, four days after its in-house counsel received notice of the first violation. Pacific did not dispute that the calls were made and expressed an interest in resolving this matter. Further, after receiving notice of the complaints, Pacific began its own investigation of the alleged complaints. Company officials also notified the CSD that they were cooperating with federal law enforcement agencies as a result of certain business practices allegedly taking place at the company's Reston, Virginia office. The CSD determined through its investigation that the toll-free telephone number provided in each of the solicitation calls

connected to an incoming call center working on behalf of the Pacific office located in Reston, Virginia.

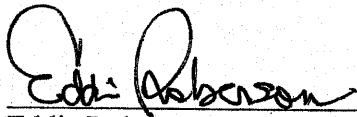
In an effort to resolve these five (5) complaints, represented by the file numbers above, CSD and Pacific agree to settle this matter based upon the following acknowledgements and terms subject to approval by the TRA:

1. Pacific neither admits nor denies that the complaints against it are true and valid and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Pacific has been registered with the TRA as a telephone solicitor since May 24, 2002, and obtains a monthly copy of the Do-Not-Call register.
3. Since receiving notice of the complaints that are the subject of this Settlement Agreement, Pacific has exhibited good faith in its efforts to come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1) and has acted in a cooperative manner in attempting to resolve this matter.
4. Pacific agrees to make a settlement payment of six thousand dollars (\$6,000.00), as authorized by TENN. CODE ANN. §65-4-405(f) to the TRA within thirty (30) days of the date the TRA approves this Settlement Agreement.¹ Upon payment of the amount of six thousand dollars (\$6,000.00) in compliance with the terms and conditions of this Settlement Agreement, Pacific will be excused from further proceedings in this matter.

¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 02-00944.

5. Pacific agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations. The Company voluntarily subscribed to the TRA's Do-Not-Call Register and has taken measures designed to prevent calls to Tennessee residents listed on the Do-Not-Call Register.
6. Pacific agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
7. The TRA and Pacific agree that the payment of \$6,000.00 to the TRA represents the settlement of all claims the TRA could bring against Pacific up to and including the date of this Settlement Agreement.
8. If any clause, provision or section of this Settlement Agreement is for any reason held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
9. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

10. In the event of any failure on the part of Pacific to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket for for the prosecution of the five consumer complaints that are the basis of this docket. Any costs incurred in enforcing the Settlement Agreement shall be paid by Pacific.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

10/4/02
Date



Signature

Brad Simon

Print Name

Corporate Secretary

Print Title

Pacific Guarantee Mortgage Corporation

9-23-02

Date